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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/672,829	09/29/2000	Cathal McGloin	P65973US0	2975
136	7590	05/19/2005	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			BUI, KIM T	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/672,829	MCGLOIN ET AL.
Examiner	Art Unit	
Kim T. Bui	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 January 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the application filed 01/28/2005. Claim 16 is pending. Claims 1-15 have been cancelled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Havens (5909669) in view of Carter et al (5428738) and "Databases with character" by Darling et al.

(A) As per claim 16, Havens teaches computer system for calculating and generating worker productivity, which is a form of employee performance evaluating, comprising:

a. an employee set up mechanism for creating database record for an employee.

Havens et al., col. 6, lines 8-11.

b. data receive mechanism to receive data units from a given source database, and to store the received data units. Havens, abstract and col. 6, line 58 to col.7, line 5.

c. a data configuration user interface, via an input means and a computer screen, for presenting information to the user. Havens, col. 10, lines 9-21.

Havens fails to teach the details of the user interface input mechanism, more specifically, the user input fields for receiving text character identifying a performance metrics, the data unit fields for receiving terms indicating data units to be used for formulate the performance metric and the user chosen mathematical operator to be performed in the formulation of the performance metrics.

Graphic use interface with visual interactive mechanism for entering data type, data unit and expression operation for performing an employee data calculation (i.e. performance metric), however, is well known as evidenced by Carter et al.

Carter et al discloses a user interface for performing calculation of employee data comprising user interface with input and screen. Carter et al., Fig 6a, col. 2, lines 5-8, lines 34-36. Carter et al. text character terms identifying an object function (i.e. performance metric). Carter et al., col. 3, lines 11-13, Fig. 6b. Data unit type fields for collecting data values or units to be used in the calculation. Carter et al., col. 4, lines 58-67. Input mechanism to receive via computer screen mathematical chosen operator for performing calculating on the data units in the formulation of the given object. Carter et al., operator box 12 in Fig. 2, col. 2, lines 8-9.

It would have been obvious to one having ordinary skill in the art at the time of the invention to include data configuration user interface with input mechanism having text, and mathematical operator input mechanism disclosed by Carter et al. with the motivation of facilitating user input by replacing complex logical constructs by easily recognized visual equivalents on computer screen. Carter et al. col.1, lines 34-38.

The combination of Havens and Carter et al. fail to expressly recite the data fields for entering the mathematical operators. The use of data fields for defining data type, data value and operator is well known as evidenced by Darling et al. Darling et al., page 2, lines 33-38, page 3, line 44 to page 4, line 7, page 8, line 33 to page 9, line 2, page 9, lines 31-37, page 18, lines 10-13. It would have been obvious to one having ordinary skill in the art at the time of the invention to use to create user interface with defined data fields with the motivation of facilitating the screen formatting by database definition. Darling, page 2, lines 33-38.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a

terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 16 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of copending Application No. 09-672830. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 23 of Application No. 09-672830 recites a generic performance metric calculation system having data receiving mechanism, source database and user interface.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

5. Applicant's arguments with respect to the amended claim(s) have been considered but are moots in view of new ground(s) of rejection.

(A) On page 3 of the Remarks filed 01/28/2005, Applicant stated that there is no need to address or response to the statements and assumptions made in the Office Action dated 07/28/2004 as they are moots in view of the newly submitted claim 16.

(B) On pages 4-5 of the Remarks, Applicant argues that claim 16 recite computer screen with user input for entering defining text character terms, data unit type terms and mathematical chosen operator. In response, it is respectfully submitted that the use of a user interface having computer screen with available input mechanism defining text -objects, value units, mathematical operator for easier configuration and useful

calculating of a formulation defined by text object using data values is well known in the art as evidenced by the teachings of Carter et al. as discussed in the above rejection of claim 16.

(C) On pages 4-5 of the Remarks, Applicant argues that Powers, Ibarra, Darling article fail to teach the features recited in claim 16. In response, this argument have been considered but are in view of new ground(s) of rejection.

Also on page 5 of the Remarks, Applicant argues that Darling article fails to the flexibility and ease of configuration in the definition of performance metrics and that claim 16 require more than mere the use of data definition. In response, the Examiner respectfully submitted the applicant argues against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The graphic user interface with input mechanism for user interaction and data entering with flexibility and ease of configuration is disclosed in Carter et al as discussed in the above rejection of claim 16, and is also suggested by Darling on page 8, lines 10-14, lines 23-25. Darling teaches more than data definition database, the reference teach the use of data definition database for easily configuring user interface for menu creation and report generation. The calculation of worker productivity (i.e. performance metrics) is well known as evidenced by Havens. See the above rejection of claim 16.

Affidavit

6. The Declaration under 37 CFR 1.132 filed 06/25/2004 is insufficient to overcome the rejection of claim 1-15 as set forth in the last Office action because:

Claims 1-15 have been cancelled,

The declaration was filed by an interested party, Ms. Cathal McGloin is the inventor of the present application,

The declaration provided conclusions without facts to support these conclusions, and addressed only the motivation for combining the references, Ibarra and Powers, and contained only Ms. McGloin's opinion.

Furthermore, since the Examiner is not combining Ibarra and Powers in the rejection of new claim 16 in the instant Office Action, the declaration is moot.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "Graphic code generation wizard for automatically creating graphical programs" (5966532) discloses graphic programming system with user interface object controls and graphic code generation wizard, McDonald et al. the abstract; "Graphic user interface for creating database integration specifications" (5721912) discloses user interface having interactive window for defining a data translator and input mechanism for specifying name, type, data value, rules (i.e. expression or mathematical operator), Stepczyk et al., Fig. 8, col. 9, lines 20-37.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim T. Bui whose telephone number is 571-272-6768. The examiner can normally be reached on Monday-Friday from 8:30A.M. to 5:00P.M..

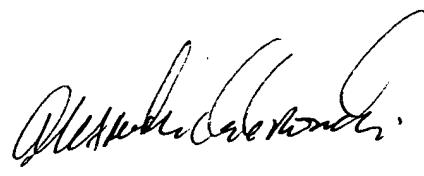
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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KTB
05/04/05



ALEXANDER KALINOWSKI
PRIMARY EXAMINER